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INTRODUCTION

The past few centuries have yielded a great many impressive studies on the institutional, political and administrative history of the Roman Republic and the early Empire. Nonetheless, to the best of my knowledge, the republican constitutional principle of the high command, the *summum imperium auspiciumque*, has never been subject to comprehensive scrutiny and analysis. So far, official interaction between different (categories of) Roman officials *cum imperio* has always been discussed in terms of the relative strength of the *genera imperii* of the imperators involved¹. In addition to the *praetorium imperium* and the *consulare imperium*, the *dictatorium imperium* was the third of the traditional *genera imperii*². In absolute terms, the hierarchy of these three categories of *imperium* was crystal clear, with the *dictatorium imperium* being *maius quam* the *consulare imperium*, whereas the *consulare imperium* was *maius quam* the *praetorium imperium*³. There is every indication that this difference between the three *genera imperii* was ‘quantitative’ rather than ‘qualitative’ in that all *imperia* were essentially the same kind of higher official authority but the *dictatorium imperium* was twice as strong as the *consulare imperium*, and the *consulare imperium* twice as strong as the *praetorium imperium*. Our

- 1 This study consistently follows the Roman republican habit of terming any holder of independent *imperium* ‘imperator’, whereas the same term will be capitalized to designate those imperators who had received a *salutatio imperatoria* from their army in the field.
- 2 For some references to the *praetorium imperium*, see Cic. *Pis.* 38; *Verr.* 2.5.40 & *Diu.* 1.68.; for the *dictatorium imperium*, see Livy 22.34.2: *dictatorio imperio*.
- 3 For the *dictatorium imperium* being *maius quam* the *consulare imperium*, see, e.g., Cic. *Leg.* 3.3.9; Livy 5.9.7, 7.3.5–8; 8.32.3; 22.10.10; 22.11.5 & 30.24.1–4 (*dictator [...] pro iure maioris imperii consulem in Italiam reuocauit*); Dion. Hal. 5.71.2; *ILS* 212, col. 1, ll. 29f.; *Dig.* 1.2.2.18). *Contra* Brennan 2000, 21 and esp. 38–41, who mounts an unconvincing effort to demonstrate that “we ought to regard the dictator’s powers as the same as the consuls’, but different”, and consequently has no choice but to explain away all evidence to the contrary. Although the consuls held *maius imperium* vis-à-vis the praetors, they still belonged to the same magisterial college under augural law since the praetors were elected under the same (type of consular) auspices as the consuls. On the one hand, this collegiality meant that praetors could not elect consuls precisely because a greater *imperium/collega maior* could not be elected by a lower *imperium/collega minor*, or even praetors, because praetors were proposed as colleagues of the consuls, who held *maius imperium* – in other words: the praetor’s inability to elect praetors stemmed from the fact that the praetor was (elected as) the colleague of the consuls. On the other hand, this collegiality under augural law also meant that consuls and praetors held the same type and *potestas* of *auspicia patriciorum maxima* and that praetors were thus fully capable of vitiating and hindering the consul’s auspices, and vice versa: see *Att.* 9.9.3 and (M. Valerius Messalla, *augur* and *cos.* 53, in) Gell. 13.15.4 & 6f.; comp. also Livy 7.1.6; 8.32.3 & Plin. *Paneg.* 77.4. That praetors held *minus imperium* vis-à-vis the consuls is also clear from Livy 43.14.4 & 45.43.2 and Val. Max. 2.8.2 (discussed *infra*, pp. 94–99). For a rare instance of consular *intercessio* against an edict of the praetor urbanus, see Val. Max. 7.7.6 (the consul Mamercus Aemilius Lepidus in 77 BCE).

extant sources confirm this is an appropriate representation of constitutional reality. In *Leg.* 3.3.9, Cicero indeed asserts that the dictator *idem iuris quod duo consules teneto*⁴. In *N.H.* 11.190, Pliny relates that on the first day of C. Octavius' command (as extraordinary propraetor in 43), the livers of six victims were found with the bottom of their tissue folded back inward, which was interpreted to mean that he would double his *imperium* within a year: *responsumque duplicaturum intra annum imperium*. Before the turn of the year, he first usurped a suffect consulship and next the plenipotentiary magistracy of *triumvir rei publicae constituendae*, equipped with vastly enhanced *consulare imperium*⁵. In *Syr.* 15, Appian explains that praetors accordingly had only half of the dignity (ἄξιωμασις) and half of the *insignia imperii* (viz. *fasces*) of the consuls⁶. This pyramidal power structure found its symbolical expression in the number of *fasces* (*securisque*) held by the dictator (twenty-four), the consul (twelve) and the praetor (six)⁷.

- 4 Compare also Dion. Hal. 5.71.2: τὴν ἀμφοτέρων ἐξουσίαν. This assertion in *Leg.* 3.3.9 need not be in contradiction with *Leg.* 3.3.8, where Cicero commends that *regio imperio duo sunt, iique praeuendo, iudicando, consulendo praetores, iudices, consules appellamino*. Cicero here defines the normal state of affairs in his ideal republican polity, with the consuls being the collegial and annual replacements of the king, and only next recommends that, in case of a dire ex- or internal threat, the Senate should ordain the appointment of a *magister populi* (i.e., a dictator) with *idem iuris quod duo consules teneto*, twice the royal power of the consuls but then *sine collega* and *ne amplius sex menses*. In *Rep.* 2.56, Cicero defines the *imperium* of the dictatorship, which was supposedly called into existence ten years after the establishment of the consulate, as a *nouum genus imperii (...) proximum similitudine regiae*.
- 5 See Broughton *MRR* 2, 336f. & 345f. and App. *B.C.* 4.2 (καινήν δὲ ἀρχὴν ἐς διόρθωσιν τῶν ἐμφυλίων νομοθετηθῆναι Λεπίδῳ τε καὶ Ἀντωνίῳ καὶ Καίσαρι, ἦν ἐπὶ πενταετὲς αὐτοῦς ἀρχειν, ἴσον ἰσχύουσαν ὑπάτοις) & 4.7 (ἐνομοθέτει καινήν ἀρχὴν ἐπὶ καταστάσει τῶν παρόντων ἐς πενταετὲς εἶναι τριῶν ἀνδρῶν, Λεπίδου τε καὶ Ἀντωνίου καὶ Καίσαρος, ἴσον ἰσχύουσαν ὑπάτοις). For a discussion of the powers of the *triumviri r.p.c.* under the Titian Law, see Vervaeke 2010a, esp. 89–91 & n. 118 of p. 125f. and chapter 7.5 *infra*.
- 6 Compare also Dio 37.39.2.
- 7 That the *fasces* were the exclusive *insignia imperii* is clear from, e.g., Livy 1.8.2 & 17.5f. (quoted *infra* in n. 4 of chapter 2); 2.7.7 & 28.24.14; Cic. *Phil.* 11.20; *Rep.* 2.31; *Leg. Man.* 32 & *Lig.* 22; Sall. *Cat.* 36.1 & Dion. Hal. 3.61. For the fact that the dictator was entitled to twenty-four lictors with *fasces* see, e.g., Dion. Hal. 10.24.1; Pol. 3.87.8; Plut. *Fab.* 4.2; Dio 54.1.3 and Vervaeke 2004, 51–54. Drogula 2007, 431–434 argues against the exclusive interconnection between *imperium* and the right to carry *fasces* but fails to produce a single unequivocal example of a Roman (pro)magistrate *sine imperio* being accompanied by lictors with *fasces*. In his zeal to demonstrate that “the *fasces* were merely tokens of prestige”, Drogula (op. cit., 433, n. 98) asserts that “even the *duumviri* of Capua are recorded as possessing lictors bearing *fasces*, which Cicero [in *Leg. Agr.* 2.93] says is highly unusual for a colony and a sign of great presumption and haughtiness.” First, it should be noted that, indeed very much to Cicero’s displeasure, the Capuans styled their supreme magistrates praetors, and not, as customary in other colonies, *duumvirs*, and that they went as far as mimicking the Roman practice of having two lictors with *fasces* precede the praetor urbanus (cf. also n. 65 of chapter 2), and in other respects even behaved as Roman consuls: *id quod dixi, cum ceteris in coloniis iuiri appellentur, hi se praetores appellari uolebant. Quibus primus annus hanc cupiditatem attulisset, nonne arbitramini paucis annis fuisse consulum nomen appetituros? Deinde anteibant lictores non cum bacillis, sed, ut hic praetoribus urbanis anteeunt, cum fascibus bini. Erant hostiae maiores in foro constitutae, quae ab his praetoribus de tribunali, sicut a nobis consulibus, de consili*

There is a fundamental and generally ignored difference, however, between, on the one hand, this well-known absolute hierarchy of the traditional *genera imperii*, and, on the other hand, the more subtle constitutional principle of the *summum imperium auspiciumque*. The main problem is that this hierarchy fails to clarify and explain the precise nature of power relations between imperators holding the same office or the same kind of *imperium*. What happened if, for example, two consuls, a consul and a proconsul or two proconsuls jointly conducted a military campaign, something which regularly occurred under the Roman Republic? Precisely how did the Romans settle the question of who was to hold the supreme command when two imperators with identical *imperium* operated together? Therefore, this one-sided and often too legalistic approach has unavoidably resulted in several deep-rooted misconceptions concerning the precise nature of the hierarchic relationship between imperators in Rome, Italy and the provinces, as well as a series of erroneous assessments of certain historical command structures. Since the concept of the *summum imperium auspiciumque* is vital to a good understanding of the official and actual power relations between Roman imperators in Rome and beyond, this matter deserves to be fully considered.

After a preliminary inquiry into the concepts of *imperium auspiciumque* and *ductus auspiciumque* (and its variant *ductus imperium auspiciumque*), the principle of the *summum imperium auspiciumque* will be properly defined and examined in chapter two. Special scrutiny will be given to the *turnus* of the *fasces* as a means to reconcile collegiate rule and the unity of the high command, both *domi militiaeque*. This chapter will also demonstrate and clarify the necessary interconnection between the *turnus* of the *fasces* and the (alternation of the) *summum imperium auspiciumque*. As a natural and logical pendant to chapter two, chapters three and four respectively concern the precise nature of the connection between the principle of the *summum imperium auspiciumque* and the concept of *provincia*, and the vital importance of this principle for the establishment of a sort of triumphal hierarchy when victories were gained and claimed by multiple imperators. Careful comparative analysis of a series of illuminating cases will indeed reveal how the *summum imperium auspiciumque* was the decisive factor in determining which imperator was to be given preferential treatment. The results of this inquiry, then, can explain the phenomenon of the ‘double triumph’, i.e., the triumph(s) celebrated by more than one imperator on account of the same victory. Chapter five concerns the position of the consuls in theory and in practice with respect to the proconsuls and the provinces of the Roman People. Apart from considering the official position of the consuls as Rome’s natural *summi imperatores*, this chapter will specifically highlight both conceptual and practical aspects of the power relations between consuls and proconsuls in the provinces. In addition to an assessment of how personal factors could seriously affect and distort the official chain of command, separate sec-

sententia probatae ad praeconem et ad tibicinem immolabantur. As for Polybius’ attestation (in 6.43.8) that dead aristocrats were accompanied by *fasces* during their funeral processions: that would have happened only in so far as (to commemorate that) they had held *imperium* during their lifetime. For an excellent study into the *fasces* as a powerful symbol of *imperium*, the highest form of Roman official authority, see Marshall 1984.

tions of the chapter are dedicated to the power of *SPQR* to establish exceptions to the rule and to the nonexistence of the conditional *consulare imperium maius quam* under the Republic. As a sort of practical complement to the preceding chapters, the sixth, and penultimate, offers a survey of the official and semi-official hierarchy of imperators in communal provinces. The seventh and final chapter then discusses how the foundational republican principles of joint consular supremacy and the traditional alternation of power in the provinces would be gradually eroded and subverted during the period from Sulla's dictatorship to the reign of Emperor Caesar Augustus. Rather than a minute comparative analysis of the extraordinary commands of the late Republic and the precise powers held under these commissions, this chapter will focus on how the *summum imperium auspiciumque* was increasingly concentrated in the hands of a few ambitious dynasts, both in Italy and the provinces. Indeed, it will be argued that the extraordinary dictatorship of Cornelius Sulla inadvertently initiated a process that culminated in the definitive demise of joint consular rule in Rome and Italy under Augustus in 19 BCE. Following the overall conclusions resulting from these inquiries, the postscript endeavours to reassess the thorny issue of the precise scope of the so-called *lex curiata de imperio*. Given this statute's continuous and strong associations with (the exercise of) *imperium auspiciumque*, no serious study on the high command can do without a proper analysis of the curiate law. For practical reasons, and in consideration of the high degree of technicality, I thought it better to have this discussion as a postscript to the main body of the study rather than as a preliminary chapter or an unwieldy part of chapter one.

Key sections of chapters five and six (esp. 5.4 & 6.5) are inspired by the conviction that a good understanding of the various public institutions, statutory rules and normative regulations that structure any society is simply impossible without a proper understanding of the social context and the mentality of all protagonists involved. Conversely, however, it is equally true that the public institutions of a certain society constitute the sediment of its social and political paradigms. Whereas 19th century scholarship studied these matters from a predominantly legalistic, almost positivistic angle, the next century would produce historians who instead concentrated on the realities of power or on the structural and informal determinants of Roman social and political life. This study makes a modest attempt to convert this potential field of tension into an integrated approach, believing that the complement of both methods should result in more complete and coherent historical insights. The subtleties and realities of Roman public law as a living and gradually evolving set of written and unwritten rules and regulations can, perhaps, best be understood if one carefully scrutinizes the content and scope of institutions and customary or statutory rules as well as the mentality and ethos of the individual and collective actors who shaped and incarnated them. When, for example, leading senators fought political battles in or outside the *curia*, all three of their official functions, their senatorial rank and their social status should be considered important determinants. For the sake of this inquiry, it is equally important to emphasize that, after statute laws and senatorial decrees, the largely unwritten doctrines of the *mos* and *exempla maiorum* represented the third pillar of the regulatory and normative framework

that governed the administration of the Roman Republic, its dependent territories and (the behaviour of) its official representatives. A summary though powerful formulation of the nature and validity of Roman customary law can be found in *Dig.* 1.3.32 (= Iulianus 84 *Dig.*):

De quibus causis scriptis legibus non utimur, id custodiri oportet, quod moribus et consuetudine inductum est: et si qua in re hoc deficeret, tunc quod proximum et consequens ei est: si nec id quidem appareat, tunc ius, quo urbs Roma utitur, seruari oportet. Inueterata consuetudo pro lege non immerito custoditur, et hoc est ius quod dicitur moribus constitutum. Nam cum ipsae leges nulla alia ex causa nos teneant, quam quod iudicio populi receptae sunt, merito et ea, quae sine ullo scripto populus probauit, tenebunt omnes: nam quid interest suffragio populus uoluntatem suam declaret an rebus ipsis et factis? Quare rectissime etiam illud receptum est, ut leges non solum suffragio legis latoris, sed etiam tacito consensu omnium per desuetudinem abrogentur.

When we encounter situations about which no written statutes have been established, we should uphold the precept which has been established by custom and usage. If such a precept is lacking, we should uphold a precept which is nearest to it in intent. If even this is not available, we should then maintain the law which is observed in the city of Rome. Longstanding usage is quite deservedly upheld as a substitute for statute, and we call this the law established by custom. Indeed, since the statutes themselves are binding on us for no other reason than because they have been approved by the will of the People, surely we should all deservedly be bound by those precepts which the People approve, although without written confirmation. For why does it matter whether the People declare their will by vote or by actual deed and fact? Wherefore the rule has also been most justly adopted that laws shall be abrogated not only by the vote of the legislator, but also through disuse by the silent consent of all.⁸

Even though this indeed concerns an early imperial definition, its core principles no doubt derive from the Republic, especially as the People had long ceased to cast their vote by the time of Julian. Therefore, this study puts much effort in diachronic and comparative case studies as the best available means to reconstruct discernable patterns and customary procedures.

This inquiry into Roman public law mostly concerns the Republic as it emerged from the so-called Struggle of the Orders around 300 BCE, complemented with discussions of such early republican events or customs that are informative of the constitutional practices of the middle and late Republic. Unavoidably, this effort draws extensively on ‘sub-republican’ or early imperial literary sources like Livy and Cassius Dio. Although these sources should always be treated with due caution, rejecting them as mere propaganda or fictitious retroprojections of late-republican, Augustan or early imperial realities and concepts would not only do great injustice to some of Rome’s finest historians. Such a consequential decision would also invalidate our efforts, however imperfect, to try to reconstruct and understand the gradually evolving social, political and institutional realities of the Roman Republic.

8 On the force of long-established custom (*longa consuetudine*), see also *Dig.* 1.3.33 (*Ulpianus libro primo de officio proconsulis. Diuturna consuetudo pro iure et lege in his quae non ex scripto descendunt obseruari solet* – “It is usual for long established custom to be observed as law in those matters which have not come down in writing.”) as well as 1.3.34–40. In *Top.* 5.28, Cicero duly includes the *mos maiorum* among the sources of Roman civil law: *ut si quis ciuile dicat id esse quod in legibus, senatus consultis, rebus iudicatis, iuris peritorum auctoritate, edictis magistratuum, more, aequitate consistat.*

lic. Very much in the same vein one could dismiss Polybius and even Plautus as valid sources for social and political life under the Republic as irrevocably distorted and coloured by their cultural backgrounds or their respective mindsets and purposes. Although criticism and careful scrutiny should be duly applied under all circumstances and with regard to any source, this study therefore wishes to distance itself from the excessive skepticism that threatens to undermine the very *raison d'être* of History as the scholarly discipline that seeks to reconstruct and, above all, explain past events and realities. This work essentially represents an old-fashioned, cautiously positivist, empirical and evidence-based enquiry into Roman socio-institutional history. I sincerely hope it will be judged for what it aspires to be, not for what it is not.

As the principle of the *summum imperium auspiciumque* has never been studied before as a Roman institution in its own right, I have deemed it wise and prudent to quote amply from both the sources and modern scholarship, especially in those sections detailing the current *status quaestionis* on certain important matters. This intensive, and yet rewarding, method also allows for a better understanding of the origin and genesis of such lines of thought and ideas that have long clouded our understanding of the issues at stake. In the end, I also consider this forensic approach to be a matter of genuine respect for the views and arguments of those who questioned before.